

STAFFORD COUNTY
PURCHASE OF DEVELOPMENT RIGHTS
COMMITTEE MINUTES
October 28, 2008

The meeting of the Stafford County Purchase of Development Rights Committee for Tuesday, October 28, 2008, was called to order at 7:00 p.m. by Chairman Tom Coen in the County Administration Conference Room.

Members Present: Coen, Apicella Clark, McClevey, Kurpiel and Silver

Members Absent:

Staff Present: Schultis, Stinnette, Keys and Smith

1. Staff Update

Mr. Coen stated Mr. Neuhard and Mrs. Baker could not make the meeting tonight, and asked Mr. Schultis for a staff update.

a. September 24 PDR Manager's Meeting

Mr. Schultis stated he had some notes from the September 24, 2008 PDR Manager's Meeting. He stated Fauquier has closed on an easement using the state match and have submitted and are waiting for their reimbursement. He stated they noted some things this Committee should be aware of when they get to that point. He stated the PDR Managers Meeting Coordinator will be creating a fact sheets to be posted on the Virginia Department of Agricultural and Consumer Services (VDACS) website and there will be a place to go for information on local programs. He stated currently Northampton charges a one hundred dollar application fee but Stafford County does not. He stated VDACS applications for the State Match were due October 17, 2008, and to date eleven counties had filed applications for a share of the five hundred thousand dollars. He stated Virginia Beach had nine applications for six hundred acres currently in process, Isle of Wright had worked through their 2007 applications and plan to close on 945 acres by the end of the year, with their next round in March 2009. He stated Northampton County was in the process of closing their first purchase and was not using any county funds. He stated all funds were from six outside sources, such as FWS and the Nature Conservancy and their second round of applications would begin in November. He stated Fauquier County would have six thousand two hundred acres by year end with close to two thousand acres with new August 2008 applications. He stated Fauquier was catching up with Virginia Beach.

Mr. Silver stated Fauquier County started their program after Stafford began talking about the program.

Mr. Schultis stated Clark County had twelve hundred acres last year which doubled the previous year total with one hundred fifty acres this year. Spotsylvania County was re-evaluating their ordinance, their ten lot cap has become an issue with their PDR program. Hanover County was not processing any applications. He stated other localities were having the same budget issues as Stafford and trying to find funds. He stated that would conclude his report concerning the PDR Manager's Meeting.

Mr. Silver asked how Fauquier County was financing their program.

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Mr. Schultis stated he was not sure, Mrs. Baker did not put any notes in the report. He stated he would assume they did their program similar to Stafford with state match funds. He stated Ray Pickering, who runs the Fauquier County PDR program, was available to speak to this Committee in December.

Mr. Keys stated Fauquier also had some donated easements.

Mr. Schultis stated some of the easements were donated because it was more of a tax advantage to donate the easement.

Mr. Silver stated some of the landowners in Fauquier County could afford to donate the easements because of the tax bracket they were in.

Mr. Apicella asked if it was possible to get a copy of the report Mr. Schultis presented.

Mr. Schultis stated absolutely.

Mr. Coen stated he would be interested to know how Northampton was doing the program with no county funds.

b. October 11 Farm Bureau Meeting

Mr. Coen stated he attended the October 11, 2008 Farm Bureau dinner and spoke to the members. He stated Mrs. Baker created a one page information sheet with copies of the state tax brochures. He stated he spoke after the discussion concerning the road bond and received feedback for some of the Farm Bureau members. He stated there was some resistance, but felt most of the member were pleased the county was moving forward with the program.

Ms. Kurpiel asked the nature of the reluctance.

Ms. Clark stated perpetuity and the fact that land assessments went up this year. She stated, in her opinion, some may think since assessments were up, maybe they should sell the old home place.

Mr. Coen asked Mr. Smith to give a bond update.

Mr. Smith stated he and Mr. Neuhard spoke with Bonnie Frantz, with McGuire Woods, who was the county bond counsel. He stated at this point the Committee did not have to do anything for her but should start considering the bond question and how to actually formulate the language. He suggested the Committee start that process soon to allow time for review. He stated she would not move to file the paper with the Circuit Court asking them to place it on the ballot for next November until later in the summer because once it goes to Circuit Court it was unclear if there was any going back once it was ordered. He stated given the financial situation the county was in, and depending on the outcome of the road bond and if the Board wanted to take to put the parks and recreation bond in the pipeline as well for next November, she would advise holding off for the time being in asking the court for the order.

Mr. Coen asked who would start the ball rolling concerning the wording of the question.

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Mr. Smith stated he could begin the drafting process and work with Mr. Neuhard to get it to the bond counsel for review, because she was familiar with the best language.

Mr. Coen asked the Committee their thoughts and stated at the last meeting everyone thought it would be better to start the ball rolling. He asked if there was any other discussion concerning the bond.

Ms. Kurpiel stated at the last meeting she asked for information concerning the tax deductibility on the interest and asked if any information was found.

Mr. Smith stated he found you can apply to the Internal Revenue Service (IRS) for a private rule. He stated you would have to provide the facts and background and based on those specific facts they would give a ruling.

Ms. Kurpiel stated, in her opinion, the Committee should start putting that together and asked Mr. Smith if he know how long the process for a ruling would take.

Mr. Smith stated based on the information provided it did not look like there was a customary period.

Ms. Kurpiel stated she would guess it would take about six months and would like to start working on that and try to put together all of the facts and would be happy to work with Mr. Smith.

Mr. Smith stated he did want to discuss ordinance changes but did not know if he should discuss it now or under unfinished business.

Mr. Coen stated the Committee would discuss that under unfinished business. He asked Mr. Smith if the information received for the IRS stated if the county would have to apply and the applicants could take advantage or if each individual person would have to apply.

Ms. Kurpiel stated the Committee would need to get a ruling concerning the interest being tax free or not. She stated once the ruling was received, based on all of the details of the program, then the Committee would be in a position to tell the donors the interest the County was paying would be tax free based on the letter from IRS. Then the landowner and their accountant would not have to worry.

Mr. Smith stated in his opinion the Committee could certainly state we believe there could be tax benefits for individuals that participate in the program, but would have to be careful that we were not guaranteeing there would be tax benefits. He stated circumstances could change.

Ms. Kurpiel stated the tax benefit may change but the fact that the interest would be tax free would not, assuming that the county would pay every donor interest.

Mr. Smith stated he thought the Committee would have to tread carefully and not promise something that could change based on circumstances. He stated he would not want to give bad advice.

Ms. Kurpiel stated she thought Mr. Smith should ask Virginia Beach if they had a letter from IRS. She stated if they did, perhaps they would send a copy of what they do. Then Stafford would not have to rediscover the world.

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Mr. Apicella asked if there was a distribution list for the meetings.

Mr. Schultis stated he attended one meeting.

Mr. Apicella asked if there was an e-mail list of everyone involved, then someone could email and ask if they knew anything about this issue.

Mr. Schultis stated there was some type of message board to get information on questions.

Ms. Kurpiel stated perhaps the question would be has anyone received an IRS ruling concerning interest payment for a purchase agreement.

Mr. Silver asked if it would vary from donor to donor.

Mr. Smith stated it could depend on circumstances.

Mr. Silver asked if would depend on the donor's circumstances as opposed to all of the donor's interest being tax free.

Mr. Smith stated first, in general, the Committee would have to be careful that the information provided was to the best of their knowledge, concerning the benefits of the program. He stated we were trying to help people that participate in the program, but we are not their advisors and are not offering legal advice. He stated this was information that they could move on and choose to or not to participate in the program. He stated the second item was, he would hope the ruling from IRS would be for everyone and later not have someone's individual circumstances change that ruling.

Mr. Coen asked if the County was to go forward and say they want to do this and receive a ruling, would every person involved have to get a second ruling.

Ms. Kurpiel stated no.

Mr. Coen stated he wanted to make sure.

Mr. Smith stated the county would get a general ruling based on what the plan was, but someone's individual circumstances may alter their ability to realize the benefits.

Ms. Kurpiel asked how, the interest would either be tax free or not.

Mr. Apicella stated what was being said was there should be caveats, it would be open ended because you could not know every circumstance. He stated maybe someone would make way to much money or someone could not make enough money. He stated the Committee members were not tax attorneys and just wanted to leave enough leeway that the county would not be sued because we have given the applicants a certain idea of what was going happen and in their case, it may not happen. He stated you can not foresee every circumstance.

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Mr. Smith stated correct and it appears that the ruling was based on the information given at that time, like a snapshot and something could change. He stated you certainly would not want the landowners to feel the county misled them.

Mr. Apicella stated he was on line today with the Land Trust Alliance and they had an article from September 11 concerning tax exempt for land conservation concerning federal legislation that was renewed and he could not understand the information and passed it on the Mr. Smith.

Mr. Coen asked Mr. Smith and Ms. Kurpiel to work on that information.

2. New Business

a. Financing Green Infrastructure – Report

Ms. Kurpiel stated she attended a four day meeting in which two of the days were about Financing Green Infrastructure. She stated Tom Gilbert, Trust for Public Land, was a speaker and the topic was Ballot Initiative. She stated his presentation was very good and gave the Committee copies of part of his presentation, which she thought was very good in helping the Committee get and stay organized. She stated Mr. Gilbert was located in Pennsylvania and his Land Trust works with local governments and helps them organize their ballot initiatives and helps the local government do the five steps that were delineated on the handout. She stated she did not think Stafford County could afford to hire him, but thought it was great he gave an outline. She went over the presentation and discussed each of the five steps in detail, which included feasibility research, public opinion survey, program recommendations, ballot language and organizing the campaign. She thought the information was very worthwhile and interesting and would like to suggest the Committee move down a dual path, to pursue the ballot initiative and work on the pilot program.

Ms. Clark stated obviously Stafford did not have fifty thousand dollars to run the campaign. She stated she thought having the steps was amazing.

Ms. Kurpiel stated the Committee had not discussed a survey and suggested because of the cost to do a public opinion survey, data could be pulled from other surveys such as Trust for Public Land and The Virginia League of Conservation. She stated data could be pulled from those surveys and could be “our survey”.

Ms. Clark stated two years ago a survey was sent to all landowners in the A-1 zoning district. She stated in that survey it had landowners list items that they would like more information about. She stated she did not know who did the survey, but was sure Mrs. Baker would know.

Mr. Silver stated his idea of the survey was “would you be willing to support this, not would you be interested in participating”.

Mr. Apicella stated that was a totally different audience.

Ms. Clark stated that was true.

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Mr. Silver stated the Agricultural Commission put out a questionnaire to all landowners in the A-1 zoning district which asked, if we got this program, would you be interested.

Ms. Clark stated that was correct.

Ms. Kurpiel stated she would put together what she could find and bring the information back to the Committee.

Mr. Apicella stated when a survey was done, it was like a snapshot in time given certain circumstances in a certain place. He stated you may get different answers now than you would three months or a year from now. He stated, in his opinion, you can not put a lot of weight in the results.

Ms. Kurpiel asked if the questions from another survey could be used to ask the citizens of Stafford.

Ms. Clark stated it would depend on who wrote the survey. She asked what the Committee was trying to get from the survey, was it the best wording or the oppositions so they could be addressed.

Mr. Apicella stated a survey would give you that information. He stated the purpose of a survey was to make a decision on taking action of some type. He stated the decision to put it on the 2009 ballot has already been made.

Ms. Kurpiel stated it would be nice to know if the item on the ballot would be well received.

Mr. Apicella stated, in his opinion, it would be better to find out the concerns of the people, such as economically was not the right time or the citizens do not understand enough about the program to know if it would make sense or not. He you would want to know the impediments of the minds of the citizens to agree to this item in this moment in time.

Ms. Kurpiel asked if the Committee could do a survey.

Ms. Clark stated writing a survey that gives you the information that you really want requires a skill that she does not have. She stated you need to be really clear to get the information you are trying to get back before you start.

Mr. Schultis stated it may be best to analyze what questions other jurisdictions had and then make modifications to those questions.

Ms. Kurpiel stated she would get what information she could find.

Mr. Coen stated the Committee would have to figure out how to do the survey, considering there were no funds available. He stated, in his opinion, the Committee should ask for the information from the Agricultural Committee survey just in case that information could be helpful.

Ms. Kurpiel stated she would pull together the information she could find from the Comp Plan, the Agricultural Commission and the two or three other surveys she was aware of. She stated Mr. Gilbert's objective in his presentation was to try to inspire the people to consider the ballot initiative.

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3. Unfinished Business

a. Pilot Program

Mr. Schultis passed out a sample application packet to the Committee members. He stated the packet included the brochure, application, time line, an example of the Deed of Easement, the Ordinance, various Stafford County check lists that were put together throughout the Committee meetings, DCR brochures, Virginia Land Preservation Tax Credit, and a contact list of State Departments to obtain additional information. He stated Ms. Baker did want him to point out there were approximately seven hundred property owners in the A-1 and A-2 zoning districts and if the mail out was a single sheet the cost would be between two and three hundred dollars.

Mr. Coen stated there was a lot of information in the packet. He stated Ms. Baker and Mr. Neuhard suggested the Committee look through the packet and get back to them with any information the Committee would like to add or remove from the packet. He stated, in his opinion, it would be nice to have a cover letter or a check list to advise what was in the packet. He asked once the one page mailer was sent out, if someone was interested they would come in and pick up the packet.

Ms. Clark asked if the two to three hundred dollars for the mailer would come out of the grant money and asked if the Committee had any money other than the grant money.

Mr. Schultis stated he was not sure where that money would come from and stated he would find out for the Committee.

Mr. Coen stated one way to inform citizens of the Pilot Program would be through the mailer.

Ms. Kurpiel asked the cost of the packet.

Mr. Coen asked the Committee to come back with suggestions as to what information would be distributed at the public meeting versus all the time.

Ms. Kurpiel stated the information should be made available on the web.

Mr. Schultis stated yes it could be available on line.

Ms. Kurpiel asked how the questions were developed.

Mr. Schultis stated the questions were a mixture of the development criteria and other jurisdictions questions. He stated it was tailored around what Stafford was looking for in the ranking criteria.

Ms. Kurpiel stated at the meeting she attended for attorneys and accountants, she had received an annotated Deed of Easement that Virginia Outdoors Foundation (VOF) uses and it shows all the paragraphs that they use and the reason for each paragraph. She stated the County Attorney drew up the Deed of Easement for Stafford, but he was no longer with the county, so she could not ask him why or where information was obtained. She asked Mr. Smith if he could compare the VOF Deed of Easement to Stafford's Deed of Easement to make sure everything was covered.

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Mr. Smith stated he could review the Deed of Easement.

Mr. Coen stated it would take some time to review the Deeds of Easement and see if edits or changes were required. He asked Mr. Smith if he could bring that back to the next meeting.

Mr. Smith stated that would be fine.

Mr. Coen stated Mrs. Baker and Mr. Neuhard had mentioned the time line and stated the public meeting would be held at the end of January or early February. He asked if anyone had any preferences concerning the time line or if they were okay with the time line presented.

Ms. Clark asked if five month for negotiations to closing sounded logical.

Ms. Kurpiel stated it would actually be six months.

Mr. Coen asked the Committee their thoughts for the public information meeting.

Ms. Clark stated she had a concern if there would be enough people present to answer almost any question asked because there would not be enough time to research and respond. She stated it would be important to answer those questions, because of the number of people attending. She suggested having a panel instead of one person for the information meeting.

Mr. Coen stated he thought someone would give a PowerPoint presentation then the panel could answer the questions that the public may have.

Mr. Apicella stated he thought with a panel someone could give an overview of the program and each of the panel members could speak to specific topics. Than the public could ask questions and the panel could answer those questions.

Ms. Clark stated someone should discuss ranking and the application.

Ms. Kurpiel suggested holding one follow up meeting for people who are genuinely interested, possibly a week or two after the public information meeting, and additional questions could be answered. She stated she also thought some legal points should be made, such as the land would be in perpetuity, would be recorded against your property, you have to abide to the terms of the agreement and someone would come by every year to verify and those types of things.

Ms. Clark stated those items could be deal breakers.

Ms. Kurpiel stated that was correct and felt those things should be brought out up front.

Mr. Coen stated then there would be something like administrative, which would be the ranking and the application process, benefits, legal issues that may arise.

Mr. Apicella suggested perhaps a landowner that has done this in another jurisdiction, who has been through the process, who could tell the citizens this is what I got out of it and these are things you have to look out for.

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Ms. Kurpiel asked how the Committee was going to determine how many development rights were being discussed. She stated there might be a need for two meetings because of the amount of material.

Mr. McClevey stated he would like to seek out a dozen or so potential property owners that they could have a one on one discussion with and walk them through the program before the meeting.

Ms. Clark stated since you are giving money, you would have to offer it to everyone in the County.

Mr. Apicella stated there would be an issue of fairness, because everybody who was eligible should have a chance. He stated he did understand what Mr. McClevey was saying but would have to question the legality.

Mr. McClevey stated the public meeting had to be a serious meeting where people could sign up for appointments to meet with someone to fill out an application and get the process going.

Ms. Clark stated she did not see anything wrong with asking someone if they received the letter and encouraging them to attend the meeting.

Mr. Coen stated if the perception was there was a select group being courted for this program then it could be viewed as the “good old boy network” and therefore people may not feel it was for everyone but for certain people.

Mr. McClevey asked if the application packet would be available at the public meeting.

Mr. Coen stated that was something that would need to be decided and stated Ms. Kurpiel’s suggestion of a follow up meeting was a good idea for those that are really interested.

Mr. McClevey suggested the mail out of the letter in December to get the interest of the people and they could call for further information or an application.

Mr. Coen stated the letter could certainly say contact for more information.

Mr. Apicella stated the letter could state look at the web site and come to the meeting with questions.

Mr. Silver stated the Committee should target one hundred acre tracts or larger.

Mr. Coen stated it was his understanding the Committee was in agreement of having a panel to present information and handle questions. The basic grouping was administration of the program, ranking and application, the process, someone to explain funding, benefits and someone to explain the legal aspects and have a landowner from Fauquier County that has already been through the program.

Ms. Clark asked if the Planning staff was anticipating sitting down with potential applicants to answer questions.

Mr. Schultis stated it would depend on the number of interested participants.

Ms. Kurpiel stated some of the questions could be answered over the phone.

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Mr. Silver stated it was important to get the information out, but there was danger in giving out too much information at the first meeting. He stated the meeting should be a general overview meeting of thirty to forty five minutes and if additional information was required, the landowner could schedule a meeting. He stated in his opinion the general question would be how would this apply to me. He stated the information was important, but stated if he was interested he would bring his attorney and accountant.

Ms. Kurpiel stated the FAQ's in the folder were pretty comprehensive.

Ms. Clark stated the FAQ's were passed out at the Farm Bureau meeting. She stated Mrs. Baker worked really hard on the question with precise answers.

Mr. Coen suggested the Committee look at the information in the package, think about what would be given out at the public information meeting. He stated if people were interested, they could stay later to talk.

Mr. Apicella stated part of the presentation that was given to the Board of Supervisors would be a good start.

Mr. Coen stated the Committee members could get suggestions to either Mrs. Baker or Mr. Schultis or himself.

Ms. Clark stated Mr. Silver just reminded her about the cash upfront for the pilot program, so that may have to be handled differently for the public information meeting.

Mr. Silver stated if the bond referendum was approved, that would not be a factor. He stated the applicant would get interest first and then get the balance, but not it would be cash up front.

Mr. Coen stated one last thing about the pilot program that Mr. Neuhard and Mrs. Baker mentioned was that they would have to go back to the Board of Supervisors in December to change the deadline that was in the Ordinance and to remove the appraisal step. He stated since the timeframe of the pilot program those items would need to be addressed. He asked the Committee to look at the packets and think about the February information meeting and give feedback at the next meeting.

Mr. McClevey asked for clarification on the program regarding approval of the easements by Agricultural and Consumer Services. He asked if that would be a hindrance to the program.

Ms. Kurpiel stated at some point in time, before going before the Board of Supervisors, the top three should be presented to Mr. Schmidt for his input before they are taken to the next step. She stated there was no guarantee that the landowners would go to settlement. She asked Mr. Keys about the values.

Mr. Keys stated the value was down. He stated if assessments were to go out tomorrow you would see a significant decrease in land value, but he could not put an exact number per acre.

Ms. Kurpiel stated she thought the range was twenty to forty thousand for one acre.

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Mr. Keys stated A-1, one acre, the most expensive per acre was forty and the average was twenty.

Ms. Kurpiel stated she thought that was how the Committee got to thirty thousand.

Ms. Clark stated that was thirty per development right, not per acre.

Ms. Kurpiel asked if the Committee should be concerned about the value dropping.

Mr. Apicella stated he did not think property values would stay down in Stafford County. He stated it was thirty thousand per development unit not per acre.

After a brief discussion between the committee members concerning the value for development right, Ms. Kurpiel stated it would be under fair market value.

Mr. Coen asked if there was any other new business. He stated he contacted the Conservation Partners in California, and according to them, they help localities not individuals in dealing with easements and are just starting to get into PDR's.

Ms. Kurpiel asked if it was the correct organization.

Mr. Coen stated it sounded like they were the correct organization and they were dealing with some things in Virginia and Pennsylvania, but they did not do the things suggested by the State.

Mr. Apicella stated the information was in the package.

4. Next Meeting

Mr. Coen stated Ray Pickering of Fauquier would be happy to speak to the Committee during the day December 3 or 4, 2008 between 10:00 am and 1:00 pm. He stated the Committee would have to decide if they would like to have an informal sub-committee meet with him and report back to the Committee or change the meeting dates.

a. Potential change in meeting dates for November and December

Mr. Coen stated another big issue was the November and December meetings were close to the holidays, the November meeting would be the Tuesday before Thanksgiving and the December meeting would be December 23, 2008. He stated the Committee could meet on November 18, 2008 instead of meeting later in the month. He stated there was not Board of Supervisors meeting scheduled for that date or not hold the November meeting and have the December meeting on December 9, 2008 and combine the two meetings. He asked if two people would be interested in meet with Mr. Pickering as a sub-committee on December 3 or 4, 2008 to ask questions and obtain information and report back to the Committee. He asked if everyone was okay with meeting on November 18, 2008.

Ms. Clark stated she would be out of town.

Mr. Apicella stated he could attend November 18, 2008 but not November 25, 2008.

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Mr. Coen asked the Committee if they wanted to meet December 23, 2008 and December 3 or 4, 2008.

Mr. Apicella suggested the Committee play the December meeting by ear, based on the November meeting.

Mr. Coen stated that would meet the two week notice for a December meeting. He asked everyone to review their packet and come back with suggestions and comments at the next meeting.

5. Adjournment

With no further business to discuss, the meeting was adjourned at 8:30 p.m.